

The complaint

Mr D is unhappy that Starling Bank Limited won't refund transactions he didn't make.

What happened

- Mr D received a text message followed by a call from someone claiming to be from Starling. They told him someone was trying to use his account and said they'd help to secure it. Mr D recalled some of their instructions to do this – for example, confirming some of his card details and deleting the Starling app.
- After the call, Mr D contacted Starling and discovered two payments had left his account totalling £3,100. Starling declined to refund these and further to a complaint, it maintained its position. So Mr D brought his concerns to our service to investigate.
- On 22 December 2022, I issued a provisional decision which upheld the complaint. Starling didn't reply by the deadline given. Mr D accepted my findings and confirmed that his Insolvency Practitioner didn't have an interest in the complaint.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Given that neither side had anything further to add, I see no reason to depart from my provisional decision. For completeness, I've included my findings again below.

- *"Starling accepted these were unauthorised transactions. However, in line with the Payment Services Regulations 2017, it refused to refund them because it asserts Mr D failed with gross negligence to comply with the terms of the account and keep his personalised security details safe.*
- *I'm not persuaded that's the right consideration. These transactions came entirely from Mr D's overdraft. As per Section 83 of the Consumer Credit Act 1974, he isn't liable for losses arising from the unauthorised use of a credit facility. That's not subject to a consideration of intent or gross negligence.*
- *So Starling need to put things right – by restoring his account to how it would've been had these unauthorised payments not been taken. I've set out how I expect Starling to do that below.*
- *Starling ought to have sorted this out much sooner – because it didn't, Mr D has been stressed and anxious about getting this money back. And this happened at a time when his circumstances made him vulnerable – something he explained to Starling at the time. So I also award £250 to reflect his non-financial losses.*
- *I've noted Mr D is subject to an Individual Voluntary Arrangement. So he needs to provide our service with confirmation over whether his Insolvency Practitioner has an*

interest in this complaint. I remind Mr D that any sum of money he receives could affect the terms of his IVA, so it's important he lets them know."

My final decision

For the reasons I've explained, I uphold Mr D's complaint. Starling Bank Limited must:

- Pay Mr D the total of the unauthorised transactions, less any amount recovered or refunded – I understand this to be £3,100.
- Rework Mr D's account and refund any interest and charges, along with amending his credit report to remove any negative reporting, that were caused by the transactions. If Mr D repaid the borrowing created by the transactions, Starling should also add 8% simple interest per year from the date he repaid the borrowing to the date of settlement (less any tax lawfully deductible).
- Pay Mr D £250 to reflect his distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 February 2023.

Emma Szkolar
Ombudsman